

USDC SDNY
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DOC #:
DATE FILED: 1/27/2021

Memorandum Endorsement


United States of America v. Perry Gumbs, Case Nos. 7:16-cr-821 & 7:18-cv-6898

The Court is in receipt of *pro se* Petitioner Perry Gumbs' ("Gumbs") so-titled motions for summary judgment, dated April 6, 2020 and April 8, 2020. (See ECF Nos. 46 and 47 on No. 16-cr-821 & ECF Nos. 14 and 15 on No. 18-cv-6898.) Though unclear, the Court liberally construes both of Gumbs' motions to be requesting identical relief – *i.e.*, a modification to his criminal sentence or computation of his criminal sentence. In short, Gumbs asks this Court to either reduce his sentence by 13 months in order to, in effect, provide him with credit towards his federal sentence for time served imprisoned in a federal correctional facility prior to his conviction or to direct the Federal Bureau of Prisons to compute his incarceration in a manner in which he would receive an additional 13 months of credit towards completion of his federal sentence of imprisonment.

Gumbs directly states that he is “trying to resolve this matter through the Administrative Remedy process with [the Federal Bureau of Prisons]” (ECF No. 46 at 2.) Considering that Gumbs is currently engaged in exhausting the Bureau of Prisons process, the Court denies Gumbs' motions without prejudice. Gumbs may renew his motions if he still seeks relief after exhausting the administrative remedies offered through the Federal Bureau of Prisons. The Clerk of the Court is kindly directed to terminate the motions at ECF Nos. 46 and 47 on No. 16-cr-821 & ECF Nos. 14 and 15 on No. 18-cv-6898. The Clerk of the Court is also kindly directed to mail a copy of this Memorandum Endorsement to Gumbs at his address listed on ECF and show proof of service on the docket.

Dated: January 27, 2021
White Plains, New York

SO ORDERED:



NELSON S. ROMÁN
United States District Judge

United States District Court
Southern District of New York x

PERRY GUMBS

Petitioner

v,

18-CV-6898 (NSR)

16-CR-821 (NSR)

United States of America
Respondent

Honorable Judge

Nelson S. Roman, United State District Judge:

Motion For Summary Judgment (Rule 56.1)

Herein, Perry Gumbs, Petitioner respectfully request this court to decide in this case without a trial, because the undisputed facts show that the other party is not entitled to a verdict in that other party's favor. See Rule 56 of the Federal Rule of Civil Procedure.

ARGUMENT

I, PETITIONER, Perry Gumbs, Requesting that this court your Honor take in to account that I did not recieved jail credit from April 4, 2016 to October 12, 2017, All othe time I spent

in State and Federal pre-trial custody.

However, Federal Bureau of Prisons calculated my time wrong. see Exhibit "A" Sentence

Monitoring Computation Data sheet. I, petitioner

am currently trying to resolve this matter through the Administrative Remedy process with F.B.O.P.

The request that I am asking your honor to fulfill will resolve this matter as well.

If the court can take into consideration that Federal Bureau of Prisons has already partially granted petitioner prior jail credit of "58" prior Days jail credit under Willis credit see Willis v. United State, 438 F.2d 923, see Exhibit "A" page(2) 1 of 2.

In the near future F.B.O.P may contact this court to clarify the intent of my sentence under the petitioners Judgment in Criminal page 3 of 9 see Exhibit "B" my sentence was to be served concurrently for total of 62 months which is to be served concurrent to the New York State

undischarged term of $1 \frac{1}{3}$ to 4 years. However, anytime spent in custody prior to Sentencing is prior jail credit in light of Kayfez v. Gasele, 993 F.2d 1288 (7th Cir). I believe F.B.O.P will honor this prior jail time for all credit time to be served for the Full term of petitioners Federal sentence. I respectfully request this court to grant the Petitioner a "NUNC Pro Tunc" Sentence so Petitioner can receive credit rightfully due of time served. The petitioner is currently past due and has already finish his Maximum time on the New York State sentence as of March 9, 2020. If the court grants this motion petitioner will receive credit for 13 months spent in pretrial custody.

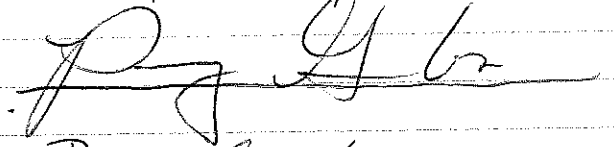
CONCLUSION

Thus, This court must determine whether in Fact petitioner is entitled to all

time spent in custody of State of New York and Federal pre-trial. This Court will undoubtedly be able to find Petitioner in favor of this ruling. For all reasons stated above in this brief, the Petitioner is respectfully requesting this Court to correct his Sentence

April 6, 2020

Respectfully Submitted



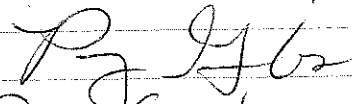
Perry Gumbs
#78042054

CERTIFICATE OF SERVICE

I, Perry Gumbs, hereby certify that a true and complete copy of Petitioner's Motion For Summary

Judgment Section 2255 motion, has been given to prison officials here at FCI Schuylkill, P.O. Box 759, Minersville, PA 17954, for mailing.

Respectfully



Perry Gumbs
#78042054

FCI Schuylkill

P.O. Box 759

Minersville, PA 17954

Geoffrey S. Berman
United States Attorney
for the Southern District of NY
1 Saint Andrew's Plaza
New York, NY 10007

Perry Gumbs #78042054

Federal Correctional Institution Schuylkill
P.O. Box 759
Minersville, PA 17954-0759

Mailed from
Federal Correctional Institution
Schuylkill, PA

LEGAL MAIL

ATTN: Court of
Clerk

TO: *United States District Court*
Southern District of New York
300 Quarropas Street
White Plains, NY 10601

10801-414000



United States District Court

Southern District of New York

PERRY GUMBS

Movant - Petitioner

v.

United States of America
Respondent

18-CV-6898 (NSR)

16-CR-821 (NSR)

Nelson S. Román, United States District Judge :

Motion for Summary Judgment (Rule 56)

Herein, Perry Gumbs, Movant respectfully request the court to decide in this case without a trial, because the undisputed fact show that movant should have recieved credit for all time spent in custody wheather State or Federal to be served concurrent including prior jail time should have been clarified by attorney to Movant as "NUNC Pro Tunc" Designation.

(1)

Breif

The issue herein is specific, Federal Bureau of Prisons has denied me all but "58" Days jail credit due to me on my federal sentence I am currently serving. While serving a state sentence I was removed from State custody on a prosequendum writ, and placed into Federal custody, where I remained by Order of federal court. The period of time is from 8-24-16 thru date of Sentencing, 10-13-17, at which time the Court Ordered the federal sentence to run concurrent with the State sentence. See Exhibit "A" Judgment in Criminal Case page 3 of 9. There is no disputing I am due and/or credited time spent post sentencing, due to concurrent sentencing. however, I must be credited with time spent in Federal custody prior to sentencing as well. For many year B.O.P. has provided that an inmate in a similar if not identical situation such as me, Can not recieve two credits for the same day.

Continuation

This has been in error then and it is error now. Case in point, when a court orders concurrent Sentencing with that of a state sentence, at the very least, the inmate, for each day served thereafter is credited with a day served on his State sentence as well as a day served on his federal sentence, thus he is given two credits for the same day served, albeit two different sentences in two distinctly ~~differe~~ different jurisdictions - state and federal. To deny me those credits rise to the level of cruel and unusual punishment, denial of due process, and infliction of mental anguish, all of which are rights protected by United States Constitution for the movant. On my Computation Data Sheet, see Exhibit "B" page 2 (1 of 2), Shows I was given prior jail credit of "58" days under Willis credit; see Willis credit v. United States, 438 F.2d 923. Through the Administrative Remedy Appeal process I started and at Regional level.

(3)

Continuation

In any case, Petitioner's attorney should have requested that the federal sentence be ran retroactive, Nunc pro tunc with his State sentence since petitioner Federal investigation inspired his state case and lead to both convictions and thus could have been remedied under §3585(b)(2). see Kaytez v. Gasele 993F.2d 1288(7th Cir.)

Relief Sought

To have sentencing judge correct on record or rule in favor of movant for Federal Bureau of Prisons to Recalculate prior time served to reflect credit from 8-24-16 thru 10-13-2017.

Conclusion

Thus, This court must determine whether I am actually in fact entitled to all time Spent in prior Custody State and Federal.

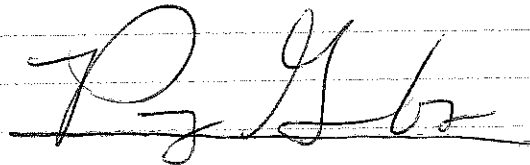
Respectfully Submitted
(4)

Affirmation

I, Perry Gumbs, do hereby affirm under penalty for perjury that the foregoing representation are true, correct, and Factual to the best of my Knowledge and belief

Affiant;

April 8, 2020



Perry Gumbs #78042054

FCI Schuylkill
P.O. Box 759
Minersville P.A. 17954-0759

~~Exhibit (B)~~

SCHFE 540*23 *
PAGE 001 *

SENTENCE MONITORING
COMPUTATION DATA
AS OF 01-15-2020

* 01-15-2020
* 11:54:22

REGNO...: 78042-054 NAME: GUMBS, PERRY

FBI NO.....: 45794FD1
ARS1.....: SCH/A-DES
UNIT.....: RDAP
DETAINERS.....: NO

DATE OF BIRTH: 02-01-1992 AGE: 27
QUARTERS.....: A01-107U
NOTIFICATIONS: NO

HOME DETENTION ELIGIBILITY DATE: 07-09-2021

THE FOLLOWING SENTENCE DATA IS FOR THE INMATE'S CURRENT COMMITMENT.
THE INMATE IS PROJECTED FOR RELEASE: 01-09-2022 VIA GCT REL

-----CURRENT JUDGMENT/WARRANT NO: 010 -----

COURT OF JURISDICTION.....: NEW YORK, SOUTHERN DISTRICT
DOCKET NUMBER.....: 7:16CR00821-01 (NSR)
JUDGE.....: ROMAN
DATE SENTENCED/PROBATION IMPOSED: 10-13-2017
DATE COMMITTED.....: 04-30-2018
HOW COMMITTED.....: US DISTRICT COURT COMMITMENT
PROBATION IMPOSED.....: NO

	FELONY ASSESS	MISDMNR ASSESS	FINES	COSTS
NON-COMMITTED..:	\$200.00	\$00.00	\$00.00	\$00.00

RESTITUTION...: PROPERTY: NO SERVICES: NO AMOUNT: \$00.00

-----CURRENT OBLIGATION NO: 010 -----

OFFENSE CODE....: 409 21:841 & 846 SEC 841-851
OFF/CHG: 21:846,21:841(B) (1) (B) CONSPIRACY TO DISTRIBUTE & POSSESS WITH
INTENT TO DISTRIBUTE CRACK (CT.1) 18:922(K) POSSESSION OF
FIREARM WITH OBLITERATED SERIAL NUMBER (CT.5)

SENTENCE PROCEDURE.....: 3559 PLRA SENTENCE
SENTENCE IMPOSED/TIME TO SERVE..: 62 MONTHS
TERM OF SUPERVISION.....: 5 YEARS
RELATIONSHIP OF THIS OBLIGATION
TO OTHERS FOR THE OFFENDER....: CC TO STATE
DATE OF OFFENSE.....: 08-24-2016

G0002 MORE PAGES TO FOLLOW . . .

(1)

Exhibit (B)

SCHFE 540*23 *
PAGE 002 OF 002 *

SENTENCE MONITORING
COMPUTATION DATA
AS OF 01-15-2020

* 01-15-2020
* 11:54:22

REGNO...: 78042-054 NAME: GUMBS, PERRY

-----CURRENT COMPUTATION NO: 010 -----

COMPUTATION 010 WAS LAST UPDATED ON 12-19-2019 AT DSC AUTOMATICALLY
COMPUTATION CERTIFIED ON 12-23-2019 BY DESIG/SENTENCE COMPUTATION CTR

THE FOLLOWING JUDGMENTS, WARRANTS AND OBLIGATIONS ARE INCLUDED IN
CURRENT COMPUTATION 010: 010 010

DATE COMPUTATION BEGAN.....: ~~10-13-2017~~
TOTAL TERM IN EFFECT.....: 62 MONTHS
TOTAL TERM IN EFFECT CONVERTED...: 5 YEARS 2 MONTHS
EARLIEST DATE OF OFFENSE.....: ~~08-24-2016~~

JAIL CREDIT.....:	FROM DATE	THRU DATE
	01-22-2016	02-03-2016
	04-04-2016	05-18-2016

TOTAL PRIOR CREDIT TIME.....: ~~58~~
TOTAL INOPERATIVE TIME.....: 0
TOTAL GCT EARNED AND PROJECTED...: ~~279~~
TOTAL GCT EARNED.....: 108
STATUTORY RELEASE DATE PROJECTED: 01-09-2022
EXPIRATION FULL TERM DATE.....: 10-15-2022
TIME SERVED.....: 2 YEARS 5 MONTHS 1 DAYS
PERCENTAGE OF FULL TERM SERVED...: 46.7

PROJECTED SATISFACTION DATE.....: 01-09-2022
PROJECTED SATISFACTION METHOD....: GCT REL

REMARKS.....: 04-11-18: COMP ENTERED D/DMR. 11-5-19: ST CC, WILLIS CREDIT
RE'VWD AND APPLIED D/DMR 12-19-19: JL CREDIT UPDT D/DMR

G0000 TRANSACTION SUCCESSFULLY COMPLETED

(2)

AO 245B (Rev. 11/16) Judgment in Criminal Case
Sheet 2 — Imprisonment

Judgment — Page 3 of 9

DEFENDANT: PERRY GUMBS

CASE NUMBER: 7:16CR00821-01 (NSR)

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

Sixty-Two (62) Months on each of Counts One and Five of the Indictment, to be served concurrently, for a total term of Sixty-Two (62) Months which shall be served concurrent to the New York State undischarged term of 1 1/3 to 4 years. Although Defendant waived his right to appeal under the plea agreement, the Court directed Defendant's attorney to thoroughly discuss the ramifications of the waiver with Defendant.

☒ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends incarceration at a facility nearest to Newburgh, New York, to facilitate family visitation.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____

DEPUTY UNITED STATES MARSHAL

Perry Gumbs #78042054

Federal Correctional Institution Schuylkill

P.O. Box 759

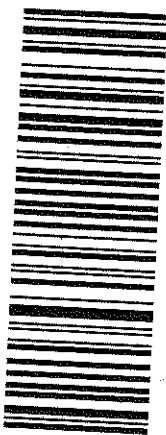
Minersville, PA 17954-0759

Mailed from

Federal Correctional Institution
Schuylkill, PA

7019 1640 0000 3463 8534

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE
CERTIFIED MAIL



7019 1640 0000 3463 8534

TO Clerk of Court.

United States Southern District Court
of New York

300 Quarropas Street

White Plains, New York 10601

1050184460 0004

